IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.2629 OF 2006

1. Akhil Bharatiya Marathi
Natya Parishad and anr. .. Petitioners

Vs

1. Shri Sunil P Mahajan
and ors. .. Respondents.

Mr Y.S.Jahagirdar, senior counsel, a/w Mr S.M.Kamble and Mr S.B.Gupte, for the petitioners.

Mr S.V.Pitre, for respondent no.1.

Mr Devendra Yadav, for respondent no.2.

Mr Sameer Gupte, for respondent nos 3 to 15.

CORAM : D.B.BHOSALE,J.
DATE : 10.10.2006

PC:

1. Heard Mr Y.S.Jahagirdar, learned senior counsel, for the petitioners, Mr Pitre, learned counsel for respondent no.1, Mr Yadav, learned counsel for respondent no.2 and Mr Gupte, learned counsel for respondent nos 3 to 15.

2. Rule. Returnable forthwith. The learned counsel, waive service for the respondents. By consent, rule is heard forthwith.

3. By this petition, the petitioners have impugned the order dated 10.2.2006, by which the preliminary

issue as to whether plaintiff's suit is maintainable for want of permission of the Charity Commissioner under section 51 of the B.P.Act,1950, has been answered in affirmative. The impugned order has admittedly been passed in the absence of the defendants and their advocates who had raised an objection as to the maintainability of the suit. The said objection was raised on 1.12.2005. Thereafter, the matter was adjourned on three-four dates and on 6.2.2006 it was once again adjourned to 6.3.2006. However, it appears that matter was taken up before the Court on 10.2.2006 and the impugned order was passed on the very same day when admittedly the defendants and their advocates were absent. In view thereof, I deem it appropriate to set aside the impugned order with a directions to the court below to decide the aforesaid issue afresh. Hence, I pass the following order.

(i) The impugned order dated 10.2.2006 deciding the preliminary issue, is quashed and set aside.

(ii) The learned Judge, City Civil Court, Greater Mumbai, shall decide the issue whether the plaintiff's suit is maintainable for want of permission of the Charity Commissioner under section 51 of the B.P.T.Act, 1950, afresh after giving an opportunity of being heard to all parties on merits in accordance with law as

expeditiously as possible and preferably within a period of four weeks from the date of receipt of this order.

(iii) Parties are directed to appear before the learned Judge of the City Civil Court, at Bombay on 18.10.2006. The learned counsel for all the parties have assured that they shall cooperate the court to decide the preliminary issue within the time stipulated by this order.

(iv) Rule is accordingly disposed of. While passing this order, I shall not be understood to have expressed any opinion on merits of the case.

(D.B.BHOSALE,J.)